

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Clarification of the)	MB Docket No. 13-50
Commission's Policies and Procedures)	
Under 47 U.S.C. § 310(b)(4))	

REPLY COMMENTS OF WILEY REIN LLP

Wiley Rein LLP hereby submits reply comments in response to the *Public Notice* in the above-captioned proceeding.¹ For 30 years, Wiley Rein has assisted broadcast licensees, financial institutions, and other investors in structuring transactions in compliance with all aspects of the Communications Act and the Commission's rules and policies, including those under Section 310(b)(4). Wiley Rein joins the near unanimous support in the record for the Coalition for Broadcast Investment's ("CBI") request that the Commission clarify its policy under Section 310(b)(4) to conduct case-by-case evaluations of proposals for foreign equity investment in excess of 25 percent in the parent companies of broadcast licensees, consistent with the authority granted to the agency by Congress.

In Wiley Rein's experience, the Commission's longstanding application of Section 310(b)(4) to act, in virtually every case, as an absolute bar to non-U.S. equity ownership in excess of 25 percent has frustrated numerous potential sources of funding for broadcast station transactions. The investment community views the limitation as unrealistic and unnecessary, but would-be investors with substantial non-U.S. participation are forced to choose between

¹ *Media Bureau Announces Filing of Request for Clarification of the Commission's Policies and Procedures Under 47 U.S.C. § 310(b)(4)*, Public Notice, DA 13-281 (rel. Feb. 26, 2013).

foregoing involvement in broadcast station financing altogether or attempting to structure debt or contingent future interests to substitute for risk capital that, absent the Commission's overly restrictive method of applying Section 310(b)(4), would be supplied in the form of equity. Often, this results in the loss of potential investment. Even where an FCC-compliant structure for the investment can be found, the result is often a complicated and inefficient arrangement that substantially increases the costs to the investors and the portfolio company and necessitates time-consuming and expensive compliance and reporting efforts for the duration of the relationship. Clearly, then, the Commission's restrictive application of Section 310(b)(4) has stood as a disincentive to investment in the U.S. broadcasting sector by willing parties and a burden to the broadcasters most in need of better access to capital.

The CBI proposal represents a legally and logically sound policy choice that will encourage the injection of much-needed capital into the broadcast industry and facilitate enhanced service offerings and ownership diversity. The statute makes clear that the Commission has full discretion to approve foreign equity investment above the 25 percent level if it finds the public interest would be served by doing so.² On the heels of its recent decision to streamline the foreign ownership rules for common carrier radio station licensees in order to “reduce regulatory costs and burdens,” “provide greater transparency and more predictability,” and “facilitate investment from new sources of capital at a time of growing need for capital investment,”³ the Commission possesses a unique opportunity to apply the same reasoning to

² “No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by— . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, *if the Commission finds that the public interest will be served by the refusal or revocation of such license.*” 47 U.S.C. § 310(b)(4) (emphasis added).

³ *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, FCC 13-50, ¶ 1 (rel. Apr. 18, 2013) (“*Foreign Ownership Second R&O*”).

allow increased foreign investment in broadcast licensees and, as Commissioner Ajit Pai has urged, “level the regulatory playing field.”⁴

By acknowledging that it has the same kind of flexibility in interpreting Section 310(b)(4)’s indirect ownership restrictions for foreign investment in broadcast licensees, the Commission will serve its longstanding goal of promoting and preserving free, over-the-air service.⁵ The Commission’s exercise of its statutory discretion as proposed by CBI would foster competition, spur innovation, and increase diversity of ownership. Most competitors to broadcasters in the evolving media marketplace face little or no limitation on permissible foreign ownership. A revised foreign ownership policy with respect to broadcast investment would correct that marketplace distortion. Moreover, it would, as Nexstar aptly observes, minimize significant broadcaster transaction costs by “reducing the number of costly compliance inquiries.”⁶

In this regard, Wiley Rein also urges the Commission to clarify that publicly-traded broadcast companies may, as is permissible for common carriers, rely on addresses of record to certify compliance with Section 310(b)(4).⁷ In the case of Vodaphone and Verizon, for example, both widely held, publicly-traded companies with a very large number of issued and outstanding shares, the Commission expressly recognized that “it would be difficult and costly,

⁴ *Id.*, Statement of Commissioner Ajit Pai, at 1.

⁵ See, e.g., *2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, ¶¶ 10-24 (2011).

⁶ Comments of Nexstar Broadcasting, Inc., at 6. “[O]wnership limitation often imposes great costs on broadcasters seeking financing, as the analysis of ownership and control mandated by Commission case law requires countless hours of legal review to assure compliance” NAMC Comments, at 3.

⁷ See, e.g., *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 02322, ¶ 89 (W.T.B. and I.B. 2013); *Iridium Holdings LLC and Iridium Carrier Holdings LLC, Transferors and GHL Acquisition Corp., Transferee Applications for Consent to Transfer Control of Iridium Carrier Services LLC, Iridium Satellite LLC, and Iridium Constellation LLC*, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 10725, ¶¶41-42 (I.B. 2009).

even using a survey methodology . . . to determine the citizenship or principal place of business of their beneficial owners, other than using the beneficial owner’s address of record.”⁸ The Commission observed that it “would be equally if not more difficult to also trace the direct or indirect foreign ownership of the beneficial owners themselves given the widely-held nature of [the] shares.”⁹ Recognizing that the benefit to its policies from requiring more detailed inquiries of shareholders was outweighed by the burden imposed on investors in public markets and the potential for financial impact on the trading of shares, the Commission endorsed use of the address of record of the beneficial owners of shares to demonstrate compliance with Section 310(b)(4).¹⁰ Given that the statute applies equally to both broadcast licensees and common carriers, it is inconsistent and improper to impose on broadcast licensees more burdensome and costly requirements associated with obtaining and verifying information to assess foreign ownership.

American viewers live in a golden age of content choice, whether it be from “traditional” outlets such as broadcasters and MVPDs, over-the-top services such as Netflix, Amazon Prime, and Hulu, or user-generated content on YouTube, to name but a few. Yet broadcast stations stand primed to compete vigorously, remaining “a vital source of local news and information for most Americans”¹¹ and with innovative new services, such as ultra-high definition service and Mobile DTV, in the pipeline. Relaxing the foreign ownership restrictions to permit the infusion of additional capital into the market will help unleash broadcaster innovation, create U.S. jobs,

⁸ *Applications of Rural Cellular Corporation and Celco Partnership d/b/a Verizon Wireless for Transfer of Control*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 12463, ¶ 149 (2008).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, ¶ 14 (2012).

and boost our economy. Moreover, as numerous commenters in this proceeding have emphasized, easing access to capital from non-U.S. sources “will help foster new entrants into broadcast ownership”¹² and “provide additional opportunities for minority broadcasters to . . . remain competitive,”¹³ particularly in this era where many U.S. banks and venture capital firms are no longer financing small and medium-sized broadcast transactions.

Aside from near overwhelming industry backing, CBI’s request already has bipartisan Commission support. Commissioner Jessica Rosenworcel has rejected disparate treatment for foreign investment among Commission licensees, stating that “transparency, efficiency, and confidence in investment should not be limited to telecommunications networks.”¹⁴ Commissioner Pai echoed that the Commission’s current policy “makes no sense” and that “[f]oreign investment can pave the way for growth and innovation in broadcasting, just as it has done for other segments of the communications industry.”¹⁵ He added that “ending [the FCC’s] anachronistic approach to foreign investment” would “bring new vitality to the broadcasting industry” and “increase access to capital.”¹⁶

As the record in this proceeding amply demonstrates, the benefits of a more flexible approach to foreign investment in broadcast stations far outweigh any perceived detriments. Wiley Rein encourages the Commission to grant CBI’s request as expeditiously as possible.

¹² Comments of Adelante Media Group, at 2.

¹³ Comments of Asian American Justice Center, at 1.

¹⁴ *Foreign Ownership Second R&O*, Statement of Commissioner Jessica Rosenworcel, at 1.

¹⁵ *Foreign Ownership Second R&O*, Statement of Commissioner Ajit Pai, at 1. *See also* Comments of National Association of Media Brokers, at 3 (“NAMB Comments”) (“When the consumer increasingly cannot tell the difference between content delivered by a broadcaster and that which comes from some other source, these arbitrary distinctions make no sense.”).

¹⁶ *Id.*, at 2.

Respectfully submitted,

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